84-835

No. _____

In The

Supreme Court of the United States

October Term, 1984

STATE OF NEW JERSEY,
Department of Corrections,
Petitioner,

v.

RICHARD NASH,
Respondent.

PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

Whether the Third Circuit Court of Appeals erred in ruling, in contravention to every other court which has considered the issue, that Article III of the Interstate Agreement on Detainers, an interstate compact entered into by 48 states, the federal government and the District of Columbia, applies to a detainer based upon a charge of probation violation?

PARTIES TO THE PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Phillip Carchman, appellant below

State of New Jersey, Department of Corrections, petitioner herein; intervenor below

Richard Nash, appellee below

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JURISDICTION

The judgment of the Third Circuit Court of Appeals was filed July 10, 1984 (App. 105 to App. 106). A timely petition for rehearing with a suggestion for rehearing *in banc* was denied August 27, 1984 (App. 103 to App. 104). Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

> Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to

*Refers to Appendix filed simultaneously with petition submitted by co-petitioner, Philip S. Carchman.

trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint: provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. [*N.J.S.A.* 2A:159A-3(a)]

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STATEMENT OF THE CASE

Richard Nash was serving a New Jersey sentence of probation for the crime of breaking and entering with intent to rape when he was convicted in Pennsylvania and sentenced to a term of imprisonment for the crimes of burglary, involuntary deviant sexual intercourse and loitering (App. 4). Because Nash committed a new crime while on probation, the New Jersey county probation office which was supervising Nash lodged a probation violation warrant as a detainer with the Pennsylvania prison authorities (App. 4).

Nash subsequently attacked the legality of the detainer lodged against him, claiming that New Jersey was without power to revoke his probation, notwithstanding his commission of a new crime, because the county authorities

failed to give him a probation violation hearing within the time period prescribed in Article III of the Interstate Agreement on Detainers (hereafter referred to as IAD). *N.J.S.A.* 2A:159A-3(a).

Nash initially filed a petition for habeas corpus in federal court pursuant to 28 *U.S.C.* § 2254 (App. 6). The petition was dismissed for failure to exhaust available state remedies (App. 6; App. 95 to App. 97). In state court, the trial court rejected Nash's claim that the Interstate Agreement on Detainers applied to a detainer based upon a charge of probation violation. The trial court revoked Nash's probation and imposed an aggregate three-year probation violation term to be served consecutively to his Pennsylvania sentence. (App. 6; App. 51 to App. 80). On appeal, the state appellate court affirmed and the New Jersey Supreme Court denied certification (App. 6; App. 43 to App. 50).

Nash then refiled his habeas petition in federal court. The district judge ruled that the Interstate Agreement on Detainers included within its scope detainers lodged on the basis of a charge of probation violation. (App. 6 to App. 7; App. 21 to App. 42). The court also ruled that Nash had properly invoked the provisions of the IAD, even though he did not comply with the application procedures set forth in the Agreement (App. 6 to App. 7; App. 21 to App. 42). *See also N.J.S.A.* 2A:159A-3. Since New Jersey failed to conduct a probation violation hearing within the 180 day period indicated in Article III, *N.J.S.A.* 2A:159A-3(a), the federal court vacated Nash's probation violation sentence and ordered Nash's release from state custody (App. 4; App. 43).

The Third Circuit Court of Appeals affirmed the district court's ruling. Based upon its independent policy

analysis, the Third Circuit panel concluded that the benefit to the prisoner of expanding the applicable scope of the IAD to probation violation detainers outweighed any insuing burden to the charging state (App. 1 to App. 18). A petition for rehearing with a suggestion that the matter be reheard *in banc* was denied (App. 103 to App. 104).

This petitioner, the New Jersey Department of Corrections, was given leave to intervene by the Third Circuit on the side of the appellant, the Mercer County Prosecutor (App. 18 to App. 20). While the Commissioner of Corrections does not supervise probationers in New Jersey, he has legal custody of and supervision over all parolees released from the New Jersey state prison system. *N.J.S.A.* 30:4-123.59(a). Intervention was also sought because the district court's ruling in *Nash* effectively invalidated the Department's policy that parole or probation violation detainers do not fall within the scope of the IAD. See Department of Corrections Standard 867.D (App. 106 to App. 109) (unpublished regulation) (hereafter referred to as D.O.C. Std.)

The district court had subject matter jurisdiction over the instant action pursuant to 28 *U.S.C.* § 2241 and 28 *U.S.C.* § 2254. The Third Circuit had jurisdiction to review a final judgment pursuant to 28 *U.S.C.* § 1291. The Department submits that the Court should review the matter as the Third Circuit's ruling in *Nash* conflicts with the hitherto uniform and longstanding construction of an interstate agreement and because the issue of the interpretation of the applicable scope of the IAD presents an important question of federal law which should be settled by the Court. *Sup. Ct. R.* 17(a); (c).

REASONS FOR GRANTING THE WRIT

This Court Should Grant The Writ In Order To Finally And Authoritatively Resolve The Conflict Created By The Decision Below.

The Interstate Agreement on Detainers is an interstate compact currently entered into by 48 states, the District of Columbia and the Federal Government. Note, *Federal Habeas Corpus Review of Nonconstitutional Errors: The Cognizability of Violations of the Interstate Agreement on Detainers,* 83 Colum. L. Rev. 975, 975 n.1 (1983). The Agreement's provisions are interpreted as a matter of federal law. *Cuyler v. Adams,* 449 *U.S.* 433 (1981).

The IAD provides a mechanism which permits the temporary interstate transfer of custody of a prisoner for the purpose of disposing of a detainer based upon an untried indictment, information or complaint. *N.J.S.A.* 2A:159A-1; 2A:159A-3(a). Pursuant to Article III, a request to dispose of such a charge may be made by the prisoner who is subject to the detainer. *N.J.S.A.* 2A:159A-3(a). Whenever a prisoner properly invokes Article III, the underlying charges must be resolved by the charging state within 180 days of its receipt of notice of the request. *N.J.S.A.* 2A:159A-3(a). Failure of the charging state to dispose of the pending charge within the time period mandated by the IAD requires a dismissal of the charge with prejudice. *N.J.S.A.* 2A:159A-3(d).

(a) Certiorari should be granted to resolve the legal conflict created by the Third Circuit's ruling.

The Third Circuit Court of Appeals ruled that the phrase "untried indictment, information or complaint" in

Article III of the IAD applied to a detainer based upon a charge of probation violation. *Nash v. Jeffes,* 739 *F.*2d 878 (3rd Cir. 1984) (App. 1 to App. 18) *reh'g denied* (August 27, 1984) (App. 103 to App. 104). *See N.J.S.A.* 2A: 159A-3(a). This ruling is in conflict with every other court which has addressed the issue, including a federal circuit court, *Hopper v. U.S. Parole Comm'n,* 702 *F.*2d 842 (9th Cir. 1983); two federal district courts, *Hernandez v. United States,* 527 *F.Supp.* 83 (W.D. Okla. 1981), *Sable v. Ohio,* 439 *F.Supp.* 905 (W.D. Okla. 1977); three state supreme courts, *Padilla v. Arkansas,* 279 *Ark.* 100, 648 *S.W.*2d 797 (1983), *Suggs v. Hopper,* 234 *Ga.* 242, 215 *S.E.*2d 246 (1975); *State v. Knowles,* 275 *S.C.* 312, 270 *S.E.*2d 133 (1980), and nine state appellate courts, *Irby v. Missouri,* 427 *So.*2d 367 (Fla. App. 1983) *overruling Gaddy v. Turner,* 376 *So.*2d 1225 (Fla. App. 1979), *Cart v. DeRobertis,* 453 *N.E.*2d 153 (Ill. App. Ct. 1983), *People v. Jackson,* 626 *P.*2d 723 (Colo. App. 1981), *Maggard v. Wainwright,* 411 *So.*2d 200 (Fla. App. 1982), *Wainwright v. Evans,* 403 *So.*2d 1123 (Fla. App. 1981), *Buchanan v. Mich. Dept. of Corrections,* 50 *Mich. App.* 1, 212 *N.W.*2d 745, (Mich. Ct. App. 1973), *People ex rel. Capalongo v. Howard,* 87 *App. Div.* 2d 242, 453 *N.Y.S.*2d 45 (N.Y. App. Div. 1982), *People v. Batalias,* 35 *App. Div.* 2d 740, 316 *N.Y.S.*2d 245 (N.Y. App. Div. 1970), *Blackwell v. State,* 546 *S.W.*2d 828 (Tenn. Crim. App. 1976). Of the fifteen cases decided prior to *Nash,* seven courts ruled that Article III of the IAD did not apply to probation violation detainers, *Padilla v. Arkansas, supra; Suggs v. Hopper, supra; State v. Knowles, supra; People v. Jackson, supra; People ex rel. Capalongo v. Howard, supra; People v. Batalias, supra* and *Blackwell v. State, supra.* Eight courts ruled that Article III of the

IAD did not apply to parole violation detainers, *Hopper v. U.S. Parole Comm'n, supra; Sable v. Ohio, supra; Hernandez v. United States, supra; Irby v. Missouri, supra; Cart v. DeRobertis, supra; Maggard v. Wainwright, supra; Wainwright v. Evans, supra* and *Buchanan v. Michigan Dept. of Corrections, supra.*

The Third Circuit was unimpressed by the reasoning of these fifteen courts, preferring instead the analysis of the district court in *Nash,* which it characterized as "considerably more comprehensive than that of any of the courts which have dealt with the issue previously." (App. 8). The district court's statutory analysis included an examination of New Jersey legislative history, which it did not find helpful, and an examination of the commentary generated by the Council of State Governments. *Nash v. Carchman,* 558 *F.Supp.* 641, 643-645, (D.N.J. 1983) (App. 21) *aff'd sub nom Nash v. Jeffes,* 739 *F.*2d 878 (3rd Cir. 1984) (App. 1) *reh'g denied* (August 27, 1984) (App. 103 to App. 104). The district court found the following comment by the Council on State Governments to be dispositive on the question of the type of detainers to which the IAD was meant to apply:

> Such detainers may be placed by various authorities under varying conditions, for example, when an escaped prisoner or *a parolee commits a new crime and is imprisoned in another state.* [*Nash, supra,* 558 *F. Supp.* at 645 (emphasis in opinion) (quoting Council of State Government, Suggested State Legislation for 1957 at 74 (1956)) (App. 28)].

The sentence quoted by the district court is contained in a longer paragraph which, when set out in full, reads:

> A detainer may be defined as a warrant filed against a person already in custody with the purpose of in-

> suring that he will be available to the authority which has placed the detainer. Wardens of institutions holding men who have detainers on them invariably recognize these warrants and notify the authorities placing them of the impending release of the prisoner. *Such detainers may be placed by various authorities under varying conditions, for example, when an escaped prisoner or a parolee commits a new crime and is imprisoned in another state;* or where a man not previously imprisoned commits a series of crimes in different jurisdictions. [Council of State Governments, Suggested State Legislation for 1957 at 74 (1956) (emphasis added; indicating material quoted by the district court)].

The commentary which is the keystone of the district court's analysis does not refer at all to the scope of the applicability of the IAD, but merely defines in a general way what a detainer is. The quoted commentary, accordingly, provides no support at all for the district court's ruling that the IAD applies to probation violation detainers. Manifestly, the district court's analysis is not more comprehensive than the fifteen other courts which addressed the issue.

Essentially, the Third Circuit rejected the unanimous judicial construction of the applicable scope of the IAD because it believed that early adjudication of a detainer based upon probation violation charge was a salutary policy goal which promoted the rehabilitation of a prisoner. (App. 8 to App. 13; *see also* App. 9 at n.7 and App. 13 at n.9). The court's policy analysis, however, is flawed.

The fundamental assumption underlying the court's analysis is that a prisoner subject to a detainer based upon a charge of probation violation can reasonably expect to have the pending probation violation charge resolved in

his favor. (*See* App. 12). The Third Circuit believed the prisoner, therefore, should be able to invoke Article III and compel an early adjudication of his probation violation charge because, if and when the charge was resolved in the prisoner's favor, the detainer against him would be lifted and he would then be able to participate fully in the rehabilitation programs offered by the state in which he was incarcerated. (App. 12).

It is unlikely, however, that early adjudication of a probation violation charge lodged because the prisoner committed a crime while on probation will result in a dismissal of the charge. The issue of factual guilt of the violation is conclusively established when one commits a new crime while on parole or probation. *See Morrissey v. Brewer,* 408 *U.S.* 471, 490 (1972) (issue of factual guilt of new crime committed while on parole cannot be relitigated at a parole revocation hearing). *See also State v. Serio,* 168 *N.J. Super.* 394, 396 (Law Div. 1979) (issue of factual guilt of new crime committed while on probation cannot be relitigated at a probation revocation hearing.) Given this legal standard, it is often, as the Court recognized in *Moody v. Daggett,* 429 *U.S.* 78 (1976), in the prisoner's interest to delay a parole or probation revocation hearing for as long as possible, because in the interim the prisoner may establish circumstances, such as a good institutional record or parole plan, which might rebut the presumption of revocation.* *Moody v. Daggett, supra,* 429 *U.S.* 78, 89.

*Under New Jersey parole law, parole must be revoked whenever a parolee commits a new crime while on parole, unless the parolee can establish mitigating circumstances, unrelated to the commission of the offense, which would militate against a revocation decision. *N.J.S.A.* 30:4-123.60 (c), *See also Morrissey, supra,* 408 *U.S.* at 490.

In view of this, the assumption underlying the Third Circuit's policy analysis that a prisoner subject to a probation violation detainer can reasonably expect the charge to be resolved in his favor has no realistic basis. In practice, and as the Court has noted, an early adjudication of a parole or probation violation charge *increases* the probability that a decision to revoke will be made. *Moody v. Daggett, supra,* 429 *U.S.* at 89 ("forcing decision immediately after imprisonment would not only deprive the parole authority of this vital information, but since the other most salient factor would be the parolee's recent convictions . . . a decision to revoke parole would often be foreordained."). Thus, such a prisoner would not be able to realize any measurable rehabilitative benefit if Article III of the IAD was applicable to probation or parole violation detainers precisely because an early adjudication of the pending charge would tend to assure that a revocation decision will be made. Hence, the prisoner will continue to be subject to a detainer while serving the intervening sentence.*

The Third Circuit recognized that when a prisoner commits a new crime while on probation a virtually conclusive presumption that probation will be revoked is trig-

*It might be suggested that a prisoner might benefit by an early revocation hearing even if his parole is revoked because the violation term might run concurrently to the new, out-of-state sentence. In New Jersey, however, parole violation terms are presumed to run consecutively to any sentence imposed for a crime committed while on probation. *N.J.S.A.* 2C:44-5(c) (amended eff. January 12, 1984). *See also N.J.S.A.* 30:4-123.27 (repealed eff. April 20, 1980). The Parole Board, moreover, has no power to order that the violation term run concurrently to a sentence imposed for a crime committed while on parole; such power is exclusively vested in a judge of the New Jersey Superior Court. *Id.* Moreover, in the very case before the Third Circuit, the New Jersey probation violation term was ordered to be served consecutively to Nash's Pennsylvania sentence (App. 6).

gered (App. 9 & n.7). The Court acknowledged that in such a case the interest of the prisoner in seeking an early adjudication of the pending probation violation charge would not be sufficiently compelling to outweigh the administrative burden and expense to the state in conducting the revocation hearing prior to completion of the out-of-state sentence. (App. 9 & n.7; *see also* App. 13 n.10: "requiring adjudication before the out-of-state sentence has been served increases the cost because it requires an additional trip.") However, the court felt that in a "significant number" of cases, the probation violation charge lodged against the prisoner incarcerated out of state would not be based on the new sentence at all, but would be based upon technical, noncriminal violations of the prisoner's probation agreement (App. 9 n.7). The court concluded, accordingly, that since the adjudication of a technical probation violation charge may require live testimony and that since a prisoner who is incarcerated out of state may be compromised by the delay in the adjudication of the charge, "concern for a fair adjudication, as well as concern for constitutional rights should inform our interpretation of the IAD" (App. 10 n.7).* Nothing in the record before the Third Circuit, however, provided any support for the view that a significant number of probation violation detainers lodged against prisoners serving new sentences are based solely on technical, noncriminal charges and the factual circumstances which would give rise to such a scenario do not readily come to mind, at least under New Jersey law.

*The Third Circuit had previously ruled, however, that a prisoner serving a sentence in another jurisdiction has no due process right to an immediate parole revocation hearing. *U.S. ex rel. Caruso v. U.S. Bd. of Parole,* 570 *F.*2d 1150 (3rd Cir. 1978).

The Third Circuit's opinion conflicts with the long-standing, uniform legal interpretation of an interstate agreement entered into by almost every sovereign entity in this country.* The court's ruling, moreover, leads to a paradoxical result that surely no legislature ever intended. Under the Third Circuit's analysis, the rights afforded by the IAD to a prisoner who is subject to a detainer based upon a new criminal charge incorporate precisely that which is mandated by the federal Constitution, namely, to have the new criminal charge disposed of expeditiously, notwithstanding incarceration out of state. *Klopfer v. North Carolina,* 386 *U.S.* 213 (1967) (speedy trial clause of the Sixth Amendment incorporated into the Fourteenth Amendment); *Smith v. Hooey,* 393 *U.S.* 374 (1969) (constitutional right to a speedy trial not obviated by defendant's incarceration out of state.)**

But under the Third Circuit analysis, the rights afforded by the IAD to a prisoner subject to a parole or probation violation detainer far *exceed* any constitutional right he has in this context. *Moody v. Daggett, supra,* 429 *U.S.* 78 (no federal due process right to have parole detainer executed promptly after filing whenever prisoner is serving intervening sentence imposed by the same sovereign); *U.S. ex rel. Caruso v. U.S. Board of Parole,* 570 *F.*2d 1150 (3rd Cir. 1978) (no federal due process right to have parole detainer executed promptly after its filing

*The first ruling on the question of the scope of Article III was in 1970. *People v. Batalias, supra.,* (IAD inapplicable to probation violation detainer).

**Note also that a prisoner subject to a new-charges detainer is presumed innocent of the underlying criminal charge. *Compare with Morrissey v. Brewer, supra,* 408 *U.S.* at 490. (Conviction of new crime while on parole or probation conclusively establishes factual guilt of violation).

whenever prisoner is serving intervening sentence imposed by a different sovereign). It is certainly anomalous to conclude that by virtue of the IAD a legislature intended to give a prisoner subject to a parole or probation violation detainer far greater rights than are afforded him by the federal Constitution and to give a prisoner subject to a new-charges detainer only those rights absolutely mandated by the Constitution. Further, it is anomalous to conclude that any legislature intended to authorize the expense of returning temporarily to the jurisdiction a prisoner subject to a parole or probation violation detainer for the purpose of conducting an early revocation hearing when the issue of factual guilt is conclusively resolved and the probability that the prisoner's parole or probation will be revoked is increased precisely because an early revocation hearing is being conducted.

The paramount obligation of a court called upon to construe legislation is to effectuate the intent of the legislature. *See, e.g., Dickerson v. New Banner Institute, Inc.,* — *U.S.* —, 103 *S.Ct.* 986, 994 (1983). In *Nash,* the Third Circuit has ignored this fundamental principle of statutory construction. Manifestly, it has imposed its own policy preference upon the operation and administration of the IAD. (*See, e.g.,* App. 13 n.9). Review by the Court is required to restore uniformity in the legal construction of the applicable scope of the IAD.

(b) The issue involved herein raises a significant federal question which should be resolved by the Court.

The Third Circuit's ruling in *Nash* creates enormous uncertainty about the legal obligation of the fifty sovereign entities that are signatory to the IAD. Must, for

example, the states of Arkansas, Georgia, South Carolina, Colorado, New York or Tennessee, whose courts have ruled that the IAD does not apply to probation violation detainers,* comply with the IAD whenever they lodge a probation violation detainer against a prisoner housed in New Jersey, or in any other state within the geographical region encompassed by the Third Circuit?

Must the federal government, or any state within the geographical region of the Ninth Circuit, or Oklahoma, Illinois, Florida or Michigan, wherein the state or federal court has ruled that the IAD does not apply to parole violation detainers,** comply with the IAD whenever they lodge a probation violation detainer against a prisoner housed in New Jersey, or in any other state within the geographical region encompassed by the Third Circuit?

What if any of the fifty sovereign entities that are signatory to the IAD lodge a parole violation detainer against a prisoner incarcerated in New Jersey, or in any of the other states within the geographical region encom-

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*Padilla v. Arkansas, 279 Ark. 100, 648 S.W.2d 797 (1983); Suggs v. Hopper, 234 Ga. 242, 215 S.E.2d 246 (1975); State v. Knowles, 275 S.C. 312, 270 S.E.2d 133 (1980); People v. Jackson, 626 P.2d 723 (Colo. App. 1981); People ex rel. Capalongo v. Howard, 87 App. Div.2d 242, 453 N.Y.S.2d 45 (N.Y. App. Div. 1982); People v. Batalias, 35 App. Div. 2d 740, 316 N.Y.S.2d 245 (N.Y. App. Div. 1970); Blackwell v. State, 546 S.W.2d 828 (Tenn. Crim. App. 1976).

**Hopper v. U.S. Parole Comm'n, 702 F.2d 842 (9th Cir. 1983); Sable v. Ohio, 439 F. Supp. 905 (W.D. Okla. 1977); Hernandez v. United States, 527 F. Supp. 83 (W.D. Okla. 1981); Irby v. Missouri, 427 So.2d 367 (Fla. App. 1983) overruling Gaddy v. Turner, 376 So.2d 1225 (Fla. App. 1979); Cart v. DeRobertis, 453 N.E.2d 153 (Ill. App. Ct. 1983); Maggard v. Wainwright, 411 N.E.2d 200 (Fla. App. 1982); Wainwright v. Evans, 403 So.2d 1123 (Fla. App. 1981); Buchanan v. Mich. Dept. of Corrections, 50 Mich. App. 1, 212 N.W.2d 745 (Mich. Ct. App. 1973).

passed by the Third Circuit. Is the ruling of *Nash* applicable? These are only a few of the questions raised as a result of *Nash*. They indicate that the issue of the applicable scope of the IAD presents a federal question of significance which must be addressed by the Court.

A prisoner subject to a probation violation detainer will not garner any meaningful rehabilitative benefit as a result of the Third Circuit's ruling in *Nash*, since the likelihood his probation will be revoked increases whenever an early revocation hearing is conducted. The prisoner, accordingly, will be subject to a detainer during the entire period of service of the intervening sentence. Certainly, if the primary purpose of the IAD was to enable a prisoner subject to a detainer to participate fully in rehabilitative programs, this purpose could have been achieved directly simply by enacting an interstate agreement which provided that prisoners subject to a detainer would not be foreclosed from participating in any rehabilitative programs. In practice, the only benefit to a prisoner as a result of the Third Circuit's ruling is that now he has a technical legal mechanism to avoid altogether completion of his duly imposed sentence. Richard Nash is the perfect example. Nash has successfully voided the obligation of service of a duly imposed New Jersey sentence by means of the IAD (App. 43). Because of the Third Circuit's ruling in Nash, which was not made prospective, all prisoners who are housed in the geographic region of the Third Circuit, and who are subject to a probation violation detainer, may be freed from the obligation of completion of service of their sentence if they have heretofore invoked Article III of the IAD. The possibility that hundreds of duly convicted prisoners may be released

prior to the completion of their sentence because of *Nash* warrants the Court's review as does, surely, the need to restore legal uniformity in the interpretation of the applicable scope of the IAD.

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CONCLUSION

For all the foregoing reasons, this petitioner, the State of New Jersey, Department of Corrections, submits that a writ of certiorari should issue to review the judgment and opinion of the Third Circuit.

Respectfully submitted,

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Dated: November 20, 1984